IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Application No. 661 of 2006

J.B. Chand S/o Sri Shahi Chand
R/o Government Girls Inter College
Tanakpur, District Champawat ..... Applicant

Vs.

1. State of Uttaranchal through
   Secretary (Home)
   Government of Uttaranchal, Dehradun
2. Chief Judicial Magistrate, Champawat
3. Krishna Nand S/o Ram Dutt
   R/o Village Chhini
   P.S. Tanakpur
   District Champawat ..... Respondents

Sri S.K. Posti, learned counsel for the petitioner
Learned A.G.A. for the State

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr. P.C. has been filed by the applicant – J.B. Chand who has been summoned by the court below in Criminal Case No. 96 of 2006 State Vs. Chandra Ballabh Joshi under Sections 279, 337, 338 of I.P.C. to face the trial.

2. Brief facts of the case are that the case was instituted against one Chandra Ballabh Joshi under Sections 279, 337, 338 of I.P.C. When the prosecution evidence started then P.W.1 - Krishan Nand brother of the injured was examined and he has deposed in his statement that offending vehicle was being driven by J.B. Chand at the time of the accident and this car hit his brother due to which he sustained injuries.

3. The prosecution moved an application to summon the applicant – J.B. Chand as an accused under Section 319 Cr.P.C. The trial court held that there was sufficient ground to summon the applicant – J.B. Chand as an accused in the aforesaid case to face the trial.

4. Feeling aggrieved by the aforesaid impugned order dated 12.07.2006, this petition has been filed by the applicant.

5. Heard Sri S.K. Posti, learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

6. After having considered the arguments advanced by the learned counsel for the petitioner, I am of the view that there is no abuse of process of the court in this case. The evidence of P.W. – 1- Krishan Nand clearly shows that it was the applicant – J.B. Chand who was driving the offending vehicle at the time of the accident and on the basis of the evidence of Krishna Nand, the trial court passed the order for summoning the applicant as an accused under Section 319 Cr.P.C., I do not find any infirmity in the impugned order passed by the court below.

7. Learned counsel for the petitioner has cited a decision of Hon'ble Apex Court before me wherein it has been submitted that the Hon'ble Apex Court has held that provision of Section 319 Cr. P.C. should be used by the court sparingly.

8. I have carefully perused the judgment of the Hon'ble Apex Court which has been cited before me but I am of the view that the cited decision does not apply to the facts and circumstances of the present case. It is not a case where the provision of Section 319 Cr. P.C. should be used by the trial

Judge, as in the instant case, P.W.1 – Krishan Nand has specifically deposed in his statement on oath that it was the applicant – J.B.Chand who was driving the vehicle at the time of the accident and only on the basis of this evidence the trial court passed the order under Section 319 Cr. P.C.

9. I am not supposed to embark upon an enquiry with regard to the credibility of the evidence at this stage. The averments advanced by learned counsel for the petitioners are the disputed question of facts, which can be judged and assessed by the trial court where the evidence is yet to be adduced. Any judgement rendered by me would amount to permature judgment at this stage where the evidence is still incomplete and hazy.

10. The petition lacks merit and is liable to be dismissed.

11. Accordingly, the petition under Section 482 Cr.P.C. is dismissed.

(B.C. Kandpal, J.)

11-08.2006
ASWAL